

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESale PRICE
LITIGATION

)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
) Subcategory No. 03-10643

THIS DOCUMENT RELATES TO:

The City of New York, et al.

v.

Abbott Laboratories, Inc., et al.

)
) Judge Patti B. Saris
)
)
)
)

**DECEMBER 2010 STATUS REPORT ON BEHALF OF
THE CITY OF NEW YORK AND NEW YORK COUNTIES**

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter referred to as “plaintiffs”) hereby submit the attached Status Report for December 2010, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: December 1, 2010

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange, by**

KIRBY McINERNEY, LLP
825 Third Avenue
New York, New York 10022
(212) 371-6600

By: /s/ Joanne M. Cicala
Joanne M. Cicala

Ross B. Brooks, Esq.
MILBERG LLP
One Pennsylvania Plaza
New York, NY 10119
(212) 594-5300
Special Counsel for the County of Nassau

Theresa A. Vitello, Esq.
LEVY PHILLIPS &
KONIGSBERG, LLP
800 Third Avenue
New York, NY 10022
(212) 605-6205
Counsel for the County of Orange

**December 2010 Status Report on Behalf of the
City of New York and New York Counties**

Voluntary Dismissal of Claims

On November 4, 2010, the Court entered an order granting plaintiffs' stipulation of dismissal of claims against defendant Biogen Idec, Inc. and entered an order granting plaintiffs' voluntary dismissal of claims against defendant Medimmune, Inc. *See* Docket No. 7295, Sub-Docket 256; Docket No. 7297, Sub-docket No. 257.

On November 10, 2010, the court entered an order granting plaintiffs' motion to dismiss claims against the Teva defendants. *See* Docket No. 7302, Sub-docket No. 260.

On November 24, 2010, the court entered an order granting plaintiffs' voluntary dismissal of claims against defendant Organon Pharmaceuticals USA, Inc. *See* Docket No. 7310, Sub-docket 262.

Plaintiffs' Expert Disclosures

On November 2, 2010, plaintiffs served the Fed. R. Civ. P. 26(a)(2)(B) expert report of Stephen W. Schondelmeyer, Pharm.D, Ph.D. (Alpharma-Purepac, Merck, Mylan, Par, and Sandoz).

On November 30, 2010, plaintiffs served the Revised Expert Report of Jeffrey J. Leitzinger, Ph.D. for NDCs Reimbursed Based on AWP or Usual and Customary Charge (Alpharma-Purepac, Mylan, Par and Sandoz).

Discovery

1. Motion to Compel Discovery from Defendant Merck

On September 4, 2009, plaintiffs filed their Motion to Compel Discovery from Defendant Merck for all at-issue drugs with annual AMP/AWP spreads over 30 percent. *See* Docket. No. 6487, Sub-docket. No. 158.

On October 5, 2009, Merck filed its opposition to plaintiffs' motion to compel. *See* Docket No. 6572, Sub-docket No. 168.

On October 23, 2009, plaintiffs filed their Motion for Leave to File Reply Memorandum in Further Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., and Exhibits to the Declaration of Joanne M. Cicala in Support Thereof Under Seal. *See* Docket No. 6609, Sub-docket No. 175.

On June 3, 2010, plaintiffs filed their Motion for Expedited Hearing re Motion to Compel Discovery from Defendant Merck. *See* Docket No. 7124, Sub-docket No. 237.

On June 21, 2010, the above motion was referred to Magistrate Judge Marianne B. Bowler. *See* June 21, 2010 electronic entry.

On November 2, 2010, plaintiffs filed their Second Motion for Expedited Hearing re Motion to Compel Discovery from Defendant Merck. *See* Docket No. 7293, Sub-docket No. 255. The motion remains *sub-judice*.

2. Defendants' Motion to Compel the production of privileged documents withheld by New York State Department of Health ("NY DOH")

On December 23, 2009, defendants filed a motion to compel production of all documents which NY DOH has withheld on the basis of the deliberative process privilege. *See* Docket No. 6810, Sub-docket No. 191.

On January 20, 2010, the office of the New York Attorney General filed its Opposition to Defendants' Joint Motion to Compel the Production of Documents from NY DOH. *See* Docket No. 6852, Sub-docket No. 197.

On June 21, 2010, the motion was referred to Magistrate Judge Marianne B. Bowler. *See* June 21, 2010 electronic entry. It remains *sub-judice*.

CERTIFICATE OF SERVICE

I, Kathryn Allen, hereby certify that on the 1st day of December, 2010, I caused a true and correct copy of the above December 2010 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: December 1, 2010

/s/ Kathryn B. Allen
Kathryn B. Allen
Kirby McInerney LLP
825 Third Avenue
New York, NY 10022
(212) 371-6600